

AMENDED IN SENATE MAY 4, 2005
AMENDED IN SENATE APRIL 12, 2005

SENATE BILL

No. 36

Introduced by Senators Florez and Escutia
(Principal coauthor: Assembly Member Berg)

December 15, 2004

An act to add Section 85310.7 to the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 36, as amended, Florez. Political Reform Act of 1974: disclosure.

Existing provisions of the Political Reform Act of 1974, as amended by Proposition 34 of the November 7, 2000, statewide general election, require a person who pays or promises to pay \$50,000 or more for an issue advocacy communication, which clearly identifies a candidate for elective state office but does not expressly advocate the election or defeat of the candidate, made within 45 days of an election, to file a specified disclosure report online or electronically with the Secretary of State within 48 hours of making or promising the payment. Existing provisions of the act also provide that if any person has received a payment or a promise of a payment from other persons totaling \$5,000 or more for the purpose of making a communication described above, except as payment for goods or services as specified, the person receiving the payments shall disclose on the report the name, address, occupation and employer, and date and amount received from the person.

This bill would require a similar filing by a person who pays or promises to pay \$50,000 for a communication to 10,000 voters within

the jurisdiction that the candidate is seeking office. This bill would require that additional disclosure if a person has received the payment or promise of a payment totaling \$2,500 or more, for the purpose of making the communication described above. *Additionally, the bill would define the word “candidate” for purposes of these requirements.*

Existing law makes a violation of the Political Reform Act of 1974 subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing potential criminal penalties on persons who violate the provisions of this bill, and by requiring local entities to receive and handle certain of the newly mandated reports.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further its purposes with a $\frac{2}{3}$ vote of each house and compliance with certain specified procedural requirements.

The bill would declare that it furthers the purpose of the act and would therefore require a $\frac{2}{3}$ vote.

This bill would declare that it is to go into effect immediately as an emergency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 85310.7 is added to the Government
- 2 Code, to read:
- 3 85310.7. (a) Any person who makes a payment or a promise
- 4 of payment totaling fifty thousand dollars (\$50,000) or more for
- 5 a communication that clearly identifies a candidate for elective

1 state office, but does not expressly advocate the election or defeat
2 of the candidate, and that is disseminated, broadcast, or otherwise
3 published to more than 10,000 voters in the jurisdiction in which
4 the candidate is seeking office, shall file online or electronically
5 with the Secretary of State a report disclosing the name of the
6 person, address, occupation, and employer, and amount of the
7 payment. The report shall be filed within 48 hours of making the
8 payment or the promise to make the payment.

9 (b) (1) Except as provided in paragraph (2), if any person has
10 received a payment or a promise of a payment from other persons
11 totaling two thousand five hundred dollars (\$2,500) or more for
12 the purpose of making a communication described in subdivision
13 (a), the person receiving the payments shall disclose on the report
14 the name, address, occupation and employer, and date and
15 amount received from the person.

16 (2) A person who receives or is promised a payment that is
17 otherwise reportable under paragraph (1) is not required to report
18 the payment if the person is in the business of providing goods or
19 services and receives or is promised the payment for the purpose
20 of providing those goods or services.

21 (c) Compliance with subdivisions (a) and (b) of this section
22 constitutes compliance with Section 85310.

23 (d) *For the purposes of this section, “candidate” means an*
24 *individual who is listed on the ballot or who has qualified to have*
25 *write-in votes on his or her behalf counted by election officials,*
26 *for nomination for or election to any elective office, or who*
27 *receives a contribution or makes an expenditure or gives his or*
28 *her consent for any other person to receive a contribution or*
29 *make an expenditure with a view to bringing about his or her*
30 *nomination or election to any elective office, whether or not the*
31 *specific elective office for which he or she will seek nomination*
32 *or election is known at the time the contribution is received or*
33 *the expenditure is made and whether or not he or she has*
34 *announced his or her candidacy or filed a declaration of*
35 *candidacy at such time. “Candidate” also includes any*
36 *officeholder who is the subject of a recall election. An individual*
37 *shall not be considered a candidate for the purposes of this*
38 *section the day after the election at which the individual is either*
39 *elected or defeated. “Candidate” does not include any person*

1 *within the meaning of the Federal Election Campaign Act of*
2 *1971 (2 U.S.C. Sec. 431(2)).*

3 (e) If any provision of this section is successfully challenged,
4 any award of attorney's fees, costs, or both shall be paid from the
5 General Fund and the commission's budget shall not be reduced
6 accordingly.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution for
9 certain costs that may be incurred by a local agency or school
10 district because, in that regard, this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the
12 penalty for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition of a
14 crime within the meaning of Section 6 of Article XIII B of the
15 California Constitution.

16 However, if the Commission on State Mandates determines
17 that this act contains other costs mandated by the state,
18 reimbursement to local agencies and school districts for those
19 costs shall be made pursuant to Part 7 (commencing with Section
20 17500) of Division 4 of Title 2 of the Government Code.

21 SEC. 3. The Legislature finds and declares that this bill
22 furthers the purposes of the Political Reform Act of 1974 within
23 the meaning of subdivision (a) of Section 81012 of the
24 Government Code.

25 SEC. 4. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety
27 within the meaning of Article IV of the Constitution and shall go
28 into immediate effect. The facts constituting the necessity are:

29 In order that the disclosures required by this act be applied to
30 elections in this calendar year, it is necessary that this act go into
31 immediate effect.